STATE OF MICHIGAN

COURT OF APPEALS

MARGARET ZARAZUA and GILBERTO ZARAZUA, Plaintiffs-Appellants, v LEITELT IRON WORKS, INC., and GRAND RAPIDS MACHINE REPAIR, INC., Defendants-Appellees, and LINK SYSTEMS, INC., and RIVER CITY ELECTRONICS CO., Defendants.	UNPUBLISHED May 16, 2006 No. 266022 Kent Circuit Court LC No. 02-004620 – NO

Before: Meter, P.J., and Hoekstra and Markey, JJ.

PER CURIAM.

In this action to recover for personal injuries, plaintiffs appeal by right from the circuit court's order granting summary disposition pursuant to MCR 2.116(C)(10) to defendants Leitelt Iron Works, Inc ("Leitelt") and Grand Rapids Machine Repair, Inc ("GRMR"). We affirm.

Plaintiffs first argue that the circuit court erred in holding that Margaret Zarazua was not an intended third-party beneficiary to Leitelt's and GRMR's contracts with MiCo, her former employer. We disagree.

This Court reviews a trial court's decision on a motion for summary disposition de novo. *Smith v Globe Life Ins Co*, 460 Mich 446, 454; 597 NW2d 28 (1999). Summary disposition is proper under MCR 2.116(C)(10) if the affidavits and documentary evidence presented and viewed in the light most favorable to the non-moving party show that there is no genuine issue of any material fact, the moving party is entitled to judgment as a matter of law. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996).

Only intended, and not incidental, third-party beneficiaries may sue for breach of a contractual promise. *Koenig v City of South Haven*, 460 Mich 667, 680; 597 NW2d 99 (1999).

A person is an intended third-party beneficiary to a contract if the promisor promised to do something or to refrain from doing something directly to or for the third party. MCL 600.1405(1); *Krass v Tri-County Security*, 233 Mich App 661, 665; 593 NW2d 578 (1999). A court must use an objective standard to determine from the contract itself whether the promisor undertook a promise directly to or for the third party. *Koenig, supra*; *Frick v Patrick*, 165 Mich App 689, 694; 419 NW2d 55 (1988). "The contract itself reveals the parties' intentions." *Id*.

In order for Zarazua to be an intended third-party beneficiary to MiCo's contracts with Leitelt and GRMR, the contractual language must demonstrate that Leitelt and GRMR undertook a promise directly for her or for a sufficiently defined class that included her. See *Koenig, supra* at 684. First, in regard to MiCo's contract with Leitelt, Leitelt's purchase order stated it would provide labor and equipment to inspect eight presses for $5,000. MiCo's purchase order accepted Leitelt's price and stated that Leitelt would provide labor and equipment to inspect eight presses. There is no contractual language demonstrating that Leitelt undertook a promise directly for the benefit of Zarazua or for a sufficiently defined class that included her. Accordingly, Zarazua is not an intended third-party beneficiary to the contract between MiCo and Leitelt.

Second, in regard to MiCo's contract with GRMR, GRMR's quote stated that it would provide men and equipment to inspect nine presses for the cost of $800 a day for two men. MiCo's purchase order accepted GRMR's price and stated that GRMR would conduct an OSHA inspection on nine presses and then submit a detailed report for MiCo's OSHA records. Although the contractual documents do not reference Zarazua or a sufficiently defined class that included her, Zarazua argues that she is an intended third-party beneficiary because the purpose of OSHA and MIOSHA is to protect workers. Zarazua is correct that the purpose of OSHA and MIOSHA is to protect workers. See *Hottmann v Hottmann*, 226 Mich App 171, 177; 572 NW2d 259 (1997).

But the language of MiCo's purchase order primarily and directly benefited MiCo and GRMR. The purchase order defined the benefit each party would provide to the other: MiCo would pay GRMR to inspect its presses, and GRMR would provide MiCo with a detailed inspection report for MiCo to retain as part of its records. There is no doubt that Zarazua stood to benefit from the contract between MiCo and GRMR. If MiCo's presses are in good repair, there is less of a chance that she will be injured while operating one of MiCo's presses. But the language of the purchase order did not reference either Zarazua or a sufficiently defined class that included her. Zarazua's benefit of increased safety at work is only an incidental benefit to the contract's stated benefit that GRMR provide MiCo with an inspection report for its records. Accordingly, Zarazua is not an intended third-party beneficiary to the contract between MiCo and GRMR.

Because Zarazua is not an intended third-party beneficiary to MiCo's contracts with Leitelt and GRMR, we need not address the circuit court's holding that the testimony of the parties established beyond dispute that Leitelt and GRMR only contracted to perform a mechanical inspection.

Plaintiffs also argue that the circuit court erred in holding that MiCo did not need to equip press no. 8 with palm buttons and a light curtain in order for the press to be operated safely. We disagree.

MIOSHA rule 2463 requires that an operator of a mechanical press be protected by one point of operation safety device. 1999 AC, R 408.12463. Palm buttons and light curtains are point of operation safety devices. *Id.* Both MiCo's president and the plant manager testified that MiCo was using the palm buttons—and not the light curtain—as the point of operation safety device to protect Zarazua as she operated press no. 8. No evidence was presented that the design and set up of the palm buttons on press no. 8 were insufficient to satisfy the requirements of R 408.12463 for palm buttons. Furthermore, no evidence was presented that Zarazua's accident would not have occurred if MiCo's floor supervisor had remembered to turn her set of palm buttons back on after he had changed the coil in the press. Because MiCo met MIOSHA's requirement of protecting Zarazua with one point of operation safety device, the circuit court did not err in holding that the light curtain was not required as a back-up safety device.

We do not need to address plaintiff's argument that the circuit court erred in holding that Zarazua's injury was not proximately caused by the improper alignment of the light curtain. Even if a defendant's actions were a proximate cause of the plaintiff's injuries, a defendant cannot be held liable unless the defendant also owed a duty to the plaintiff. See *Henry v Dow Chemical Co*, 473 Mich 63, 71; 701 NW2d 684 (2005). Because Zarazua was not a third-party beneficiary to MiCo's contracts with GRMR and Leitelt, neither GRMR nor Leitelt owed Zarazua a duty to ensure the light curtain was properly aligned. In addition, because MIOSHA rule 2463 only requires one point of operation safety device on a mechanical press, MiCo was not required to provide a safety back up to the palm buttons on press no. 8 with a light curtain. Accordingly, no one owed Zarazua a duty to make sure that the light curtain on press no. 8 was properly aligned.

We affirm.

/s/ Patrick M. Meter
/s/ Jane E. Markey

I concur in result only.

/s/ Joel P. Hoekstra